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Dalton Man Counter-sues In Casella Defamation Lawsuit

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Jon Swan, of Dalton, pictured here during a public hearing in July 2019 in Dalton on a proposal for temporary emergency zoning, is counter-suing and seeking attorney's fees from Casella Waste Systems in the defamation lawsuit that Casella filed against him in April 2020. (File photo by Robert Blechl)

A year after being sued by Casella Waste Systems for defamation, a Dalton man is counter-suing the company for attorney's fees and arguing that Casella is trying to silence him for speaking out about an issue of public interest.

In April 2020 at Merrimack Superior Court, Casella sued Jon Swan, founder of Save Forest Lake, for what it argues is his campaign to disparage Casella's reputation by publishing false statements about the company and its plan to site a 180-acre commercial landfill beside Forest Lake State Park in Dalton and his alleged efforts to lower the company's esteem in the community, damage its reputation in state government, prevent it from doing business in New Hampshire, and interfere with its economic interests and advantage.

Because of Swan's statements, Casella argues it has "suffered harm to its reputation and business."

In August, a judge dismissed a large part of the lawsuit after concluding that out of the dozens of statements by Swan that the company included in its lawsuit — many gathered from social media posts and emails — the majority do not constitute defamation, but nine statements could be defamatory if Casella can prove they are false.

On Jan. 11, Casella attorneys Bryan Gould, Cooley Ann Arroyo and Morgan Tanafon, of the Cleveland Waters and Bass law firm, of Concord, filed an amended two-count complaint and demand for a jury trial against Swan, a.k.a. Jon Alvarez, Save Forest Lake, and another group opposing the landfill, the Forest Lake Association.

"Defendants' expressly stated intent is to prevent [Casella] from engaging in business in New

Hampshire altogether and from developing landfill capacity in Dalton, and they have published a multitude of falsehoods to accomplish that goal, all of which are defamatory statements for which the law makes defendants liable,” wrote the company lawyers.

They ask the court to issue an order declaring that the defendants have defamed Casella, to enter an award of damages to compensate the company, and award the company attorney’s fees and costs.

On Feb. 1, Swan, through his attorney, Jeremy Eggleton, of the Orr and Reno law firm, of Concord, submitted an amended response to Casella’s amended complaint and also filed a counter-claim.

In the response, Eggleton argues that Swan’s statements are either opinion, substantially true, hyperbole, not defamatory and therefore not actionable, or have been ruled not actionable by the court in its August decision to partly dismiss the case.

“[Swan] has a right to speak on issues of public concern, including a right to opinion that can be aggressive or colorful, ” argues Eggleton. “[Casella] has filed this action in an effort to quash [Swan’s] right to speak against [Casella’s] proposed landfill in Dalton. [Swan] has engaged in a comprehensive public advocacy campaign against [Casella’s] landfill, which has involved thousands of public statements, letters, social media posts, and other forms of publication. Out of the thousands or tens of thousands of statements in a public advocacy campaign lasting several years to date, [Casella] has selected a handful of quotations that it believes are actionable.”

Eggleton called the company’s defamation suit “vexatious” in that its objective is to end Swan’s

campaign or exact such a cost from him in attorney's fees that he "abandons his successful efforts to draw public scrutiny" to Casella's plans.

"[Casella's] action was without foundation, and intended to vex and harass [Swan], and to thwart his rights to free speech, which are protected under the First Amendment of the U.S. Constitution ..." he wrote.

Robert Blechl